

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1420 of 2002****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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SPL.LAQ OFFICER & 1 - Appellant(s)**Versus**

**KALIDAS MOHANLAL SHAH,THRO'HISLEGAL HEIRS,CHUNIBHAI C
SHAH - Defendant(s)**

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Appearance :

MR RR MARSHALL for Appellant(s) : 1 - 2.

MR MD VAKIL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 22/01/2008****ORAL JUDGMENT**

1.0 This appeal is directed against the judgment and
order dated 15.01.2002 passed by the learned Extra
Assistant Judge, Mehsana in Land Acquisition Reference

Case No. 2314 of 1993 whereby, the said Reference was partly allowed.

2.0 The facts in brief leading rise to the filing of the present Appeal are as under ;

2.1 The Special Land Acquisition Officer, Mehsana, the appellant no. 1 herein, had initiated necessary proceedings under the provisions of the Land Acquisition Act, 1894 [for short, "the Act"] for acquiring the land situated at Village Deloli, Taluka and District Mehsana belonging to the respondent herein for temporary occupation. The said land was acquired vide order dated 20.06.1988 passed in L.A.Q. Case No. 43 of 1988 whereby, rental compensation @ Rs.00.60 per sq. metre was awarded for the said land and the standing crops.

2.2 Being dissatisfied by the said amount of compensation, a Reference was preferred u/s. 35(3) of the Act, which came to be numbered as Land Acquisition Reference Case No. 2314 of 1993. The said case was taken

up for hearing by the learned Extra Assistant Judge, Mehsana and after hearing learned counsel for both the sides, the learned Judge partly allowed the said Reference whereby a specific direction was issued to the appellants herein to pay additional amount of rent @ Rs.1.50 per sq. metre, over and above Rs.1.50 per sq. metre awarded by the Special Land Acquisition Officer, for the three years from the date of taking the possession and, thereafter, 10% price rise in market rent year to year after expiry of the three years period @ 9% per annum for the first year and, thereafter, @ 15% per annum from the date it has become due till its realization. Being aggrieved by the said order, the appellants have approached this Court by way of this Appeal.

3.0 Heard learned counsel for the respective parties and perused the documents on record. Considering the facts and circumstances of the case, it would be relevant to refer to a decision of this Court in the case of **Patel Shambhubhai Bhaichanddas v. State of Gujarat & anr.** reported in **2007 (1) G.L.R. 713** wherein, it has been held

that Sections 35 & 36 of the Land Acquisition Act, 1894 provide for temporary occupation of land for public purpose for a maximum period of three years only and that the retention of the same beyond the said period would amount to unauthorized possession and, therefore, the Collector is empowered to refer the dispute as to compensation only for the agreed term or maximum period of three years only. The observations made in Para 5.4 of the said decision reads as under;

“It is obvious that the Collector gets power to refer the dispute as to sufficiency of compensation which may arise within the agreed term or maximum period of three years. Any dispute which crosses this time-limit cannot be the subject-matter of the decision of the Court. *In other words, the Collector’s reference has to confine itself to the controversy arising within the prescribed period u/s. 35(1) of the Act. The matter of compensation is contained in Section 35 of the Act. In such reference, therefore, the Court is required to give its decision in relation to difference as to sufficiency of compensation only for maximum period of three years and not beyond that even when the reference is made within the stipulated period. Any decision on the reference beyond period of three years cannot be termed as legal and in accordance with the provisions of the Act and hence, it is without jurisdiction.*”

4.0 Similar principle has been laid down in another decision of this Court in the case of ***Oil & Natural Gas Corporation Ltd. v. Pandya Prahladbhai Manilal & Ors.*** reported in ***2007 (2) G.L.R. 1306.***

5.0 In the present case, indisputably, the acquiring body, i.e. the O.N.G.C., has retained the possession of the land in question for the statutory period of more than three years. There does not appear to be any written or oral agreement between the parties to the effect that the acquiring body shall retain the land in question for the statutory period of more than three years in pursuance of any written or oral agreement; and if any such written or oral agreement is in existence between the parties, then such retention will be governed by the said written or oral agreement. But, in any case, the provisions of Section 35 of the Act shall not apply after the aforesaid temporary acquisition period is over. Therefore, evidently, the Court below has committed an error in entertaining the Reference in question. Keeping in mind the principle laid down by this

Court in the above referred decisions, I am of the opinion that the impugned order passed by the Court below cannot be sustained.

6.0 In the result, the Appeal is partly allowed. The impugned order dated 15.01.2002 passed by the learned Extra Assistant Judge, Mehsana in Land Acquisition Reference Case No. 2314 of 1993 is quashed and set aside. The matter is remanded to the reference Court concerned and the said Court is directed to consider the same afresh, keeping in mind the law laid down by this Court in the above-referred decisions. The amount deposited by the appellant – Corporation with the reference Court shall be invested in Fixed Deposit with a nationalized Bank initially for a period of one year and the same shall be renewed from time to time till the final order is passed by the reference Court. It is clarified that this Court has not entered into the merits of the matter and the reference Court, while considering the matter afresh, shall not be influenced by the fact that this Court has quashed its earlier order. The Appeal stands disposed of accordingly. No order as to costs.

Office is directed to send the R & P to the Court below forthwith.

[K. S. JHAVERI, J.]

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